

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

IN RE:

MEI M. CARTER

NO. 16-13679 JDW

MOTION FOR RELIEF FROM AUTOMATIC STAY

Comes now Capital One Auto Finance, a division of Capital One, N.A. (hereinafter "Capital One"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Relief from Automatic Stay, pursuant to Section 362 of the Bankruptcy Code, and in support of same would show unto the Court the following, to-wit:

I

The Debtor filed his Chapter 13 Petition on or about October 19, 2016.

II

That Capital One is the holder of a secured claim as to certain personal property of the Debtor, namely one (1) 2012 Hyundai Accent, VIN KMHCT4AE6CU041912, all as more fully set forth on Exhibit "A" which is attached hereto and incorporated herein by reference.

III

That Capital One is owed the principal sum of \$9,477.28, exclusive of accumulating late charges and reasonable attorney's fees necessitated by the filing of the instant Motion.

IV

Capital One would show unto the Court that the Debtor has decided to surrender Capital One's collateral.

V

Capital One would furthermore show unto the court that the Debtor has failed and refused to maintain insurance on the subject matter vehicle duly naming Capital One as lien holder and loss payee as required by the parties' Retail Instalment Sale Contract.

VI

Adequate cause exists for termination of the Automatic Stay pursuant to Section 362(d) of the Bankruptcy Code as to the Movant, Capital One.

WHEREFORE, premises considered, Capital One would pray that after notice and hearing this Court enter its Order terminating the Automatic Stay of Section 362 of the Bankruptcy Code as to the Movant, Capital One, so as to allow it to pursue its rightful remedies as to its subject matter collateral, and that this Court furthermore enter its Order abandoning the subject matter vehicles as property of the estate, and Capital One furthermore prays that it be awarded its reasonable attorney's fees necessitated by the filing of the instant motion and Capital One prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

CAPITAL ONE AUTO FINANCE, a
division of Capital One, N.A.

BY: BYRD & WISER

BY: 
ROBERT ALAN BYRD, MSB#7651
EMAIL: rab@byrdwiser.com

CERTIFICATE

I, ROBERT ALAN BYRD, Attorney for Capital One Auto Finance, a division of Capital One, N.A., do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Relief from Automatic Stay to the following:

Miranda Linton Williford, Attorney for Debtor, at mirandalinton@gmail.com

Terre Vardaman, Trustee, at VARDAMAN13ECF@gmail.com

Office of the U.S. Trustee, at USTPRegion05.JA.ECF@usdoj.gov

WITH A COPY MAILED TO:

Mei M. Carter, Debtor
PO Box 3052
Tupelo, MS 38803

This the 12th day of July, 2018.



ROBERT ALAN BYRD

RETAIL INSTALLMENT SALE CONTRACT
SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____

Buyer Name and Address (Including County and Zip Code) NEI CARTER 1149 HIGHWAY 25 SOUTH TISHOMINGO MS 38873 TISHOMINGO	Co-Buyer Name and Address (Including County and Zip Code) BARNES CROSSINS HYUNDAI MAZDA 3983 NORTH GLOSTER ST TUPELO, LEE, MS 38884	Creditor-Seller Name and Address BARNES CROSSINS HYUNDAI MAZDA 3983 NORTH GLOSTER ST TUPELO, LEE, MS 38884
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the terms on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/ Demo	Year	Make and Model	Vehicle Identification Number	Gross Vehicle Weight	Primary Use For Which Purchased
NEW	2012	HYUN ACCENT	KMHCT4RESCUB41912		<input checked="" type="checkbox"/> Personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment.
14.79 %	\$ 9,891.31	\$ 18,856.45	\$ 28,787.76	\$ 1,588.00

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	399.83	Monthly beginning 07/21/2011

Or As Follows:

Late Charge. If a payment is not received in full within 10 days after it is due, you will pay a late charge of \$ _____ of the part of the payment that is late with a maximum charge of \$ 500.00, unless the vehicle is a commercial vehicle. For a commercial vehicle, if payment is not received in full within 15 days after it is due, you will pay a late charge of \$ _____ of the part of the payment that is late with a maximum charge of \$ 500.00 and a maximum charge of \$ 500.00.

Prepayment. If you pay off at your credit early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information. See this contract for more information including information about nonpayment, default, any required payment in full before the scheduled date and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Price (including \$ 888.45 sales tax) \$ 18,132.49

2 Total Downpayment \$ _____

Item	Amount
Gross Trade-In Allowance	\$ N/A
Less Pay Off Made By Seller	\$ N/A
Equity Net Trade-In	\$ N/A
+ Cash	\$ 1,588.00
+ Other	\$ N/A
(If total downpayment is negative, enter "0" and see 42 below)	\$ 1,588.00

3 Updated Balance of Cash Price (1 minus 2) \$ 16,632.49

4 Other Charges Including Amounts Paid to Others on Your Behalf

(Seller may keep part of these amounts):

A Cost of Optional Credit Insurance Paid to Insurance Company or Companies \$ N/A

Life \$ N/A

Disability \$ N/A

B Vendor's Single Interest Insurance Paid to Insurance Company \$ N/A

C Other Optional Insurance Paid to Insurance Company or Companies \$ N/A

D Optional Gap Contract \$ 750.00

E Official Fees Paid to Government Agencies \$ N/A

to N/A for N/A \$ N/A

to BARNES CROSSINS HY INSPECTION FEE \$ 5.00

to N/A for N/A \$ N/A

F Government License and/or Registration Fees \$ N/A

G Government Certificate of Title Fees \$ 18.00

H Document/Service Fee \$ 399.00

A DOCUMENT/SERVICE FEE IS NOT AN OFFICIAL FEE AND IS NOT REQUIRED BY LAW. HOWEVER, IT MAY BE CHARGED TO A BUYER/LESSEE FOR THE HANDLING OF DOCUMENTS AND THE PERFORMANCE OF SERVICES RELATED TO THE SALE OR LEASE AND MAY INCLUDE DEALER PROFIT. THIS NOTICE IS REQUIRED BY REGULATION OF THE MISSISSIPPI MOTOR VEHICLE COMMISSION.

J Other Charges (Seller must identify who is paid and describe purpose)

to N/A for Prior Credit or Lease Balance \$ N/A

to US WARRANTY for SERVICE CONTRACT \$ 1,188.00

to N/A for N/A \$ N/A

to N/A for N/A \$ N/A

to N/A for N/A \$ N/A

to N/A for N/A \$ N/A

to N/A for N/A \$ N/A

These Other Charges and Amounts Paid to Others on Your Behalf \$ 2,264.00

5 Amount Financed: Principal Balance (3 + 4) \$ 18,856.45

6 Finance Charge \$ 9,891.31

7 Total of Payments: Total Balance (5 + 6) \$ 28,787.76

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance to obtain credit unless the back indicating Vendor's Single Interest Insurance is required is checked below.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

☐ Credit Life ☐ Buyer ☐ Co-Buyer ☐ Both ☐ Credit Disability (Buyer Only)

Premium: Credit Life \$ N/A

Credit Disability \$ N/A

Insurance Company Name \$ N/A

Home Office Address \$ N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose not to buy, the cost is shown in item 42 of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance will pay off your loan on this contract if you make late payments. Credit disability insurance does not cover any increase in your interest or in the number of payments. Coverage to credit the insurance and credit disability insurance ends at the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

☐ N/A \$ N/A

Type of Insurance \$ N/A

Premium \$ N/A

Insurance Company Name \$ N/A

Home Office Address \$ N/A

☐ N/A \$ N/A

Type of Insurance \$ N/A

Premium \$ N/A

Insurance Company Name \$ N/A

Home Office Address \$ N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not to buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost.

I want the insurance checked above:

X N/A \$ N/A

Buyer Signature _____ Date _____

X N/A \$ N/A

Co-Buyer Signature _____ Date _____

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

☐ VENDOR'S SINGLE INTEREST INSURANCE (VSI insurance). If the preceding box is checked, the Creditor requires VSI insurance for the initial term of the contract to protect the Creditor for loss or damage to the vehicle (collision, fire, theft). VSI insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI insurance is obtained. If you elect to purchase VSI insurance through the Creditor, the cost of this insurance is \$ N/A and is also shown in item 4B of the Itemization of Amount Financed. The coverage is for the initial term of the contract.

Returned Check Charge: If you try to pay any portion of an amount you owe with a check that is dishonored, we may make a separate demand that you pay a service charge of \$ 25.

OPTION: ☐ You pay no finance charge if the Amount Financed, item 5, is paid in full on or before _____ Year. SELLER'S INITIALS _____

OPTIONAL GAP CONTRACT. A gap contract (also called a contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you agree to have a gap contract, the charge is shown in item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term 72 Mos. US GAP ADDENDUM

Name of Gap Contract _____

I want to buy a gap contract.

Buyer Sign: Mei Carter

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs Mei Carter Co-Buyer Signs X

If any part of this contract is not valid, all other parts will remain valid. We may only make changes to this contract without your consent. For example, we may extend the time for making some payments without extending the time for making others.

See back for other important agreements. Any dispute resolution agreement you sign with us or an assignee of this contract will apply to claims related to this contract.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign.

You agree to the terms of this contract and any dispute resolution agreement you signed with this contract. You confirm that before you signed this contract and any dispute resolution agreement, we gave them to you, and you were free to take them and review them. You confirm that you received a completely filled-in copy of these documents when you signed them.

Buyer Signs X Mei Carter Date 06/06/18 Co-Buyer Signs X Date 06/06/18

Co-Buyer and Other Owner: A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the liability interest in the vehicle given to us in this contract.

Other owner signs here X Address AS Title John

Seller signs Barnes Crossins Hyundai Mazda Date 06/06/18 by X

Seller assigns its interest in this contract to CAPITAL ONE AUTO FINANCE (Assigned under the terms of Seller's agreement(s) with Assignee).

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

(the refund from what you owe.

may use any insurance settlement to reduce what you owe or repair the vehicle.

[illegible]

This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest in the vehicle.

- Includes any refunds of premiums or charges from you, or other contracts we finance for you. This
- All proceeds from insurance, maintenance, service, or other contracts we finance for you; and
- All insurance, maintenance, service, or other proceeds from the vehicle;
- All money or goods received (proceeds) for the vehicle and all parts or goods put on it;

YOU OR OTHER PROMISES TO US

a. If the vehicle is damaged, destroyed, or missing.

b. You agree to pay us at all times under this contract even if the vehicle is damaged, destroyed, or missing.

c. Using the vehicle, you agree not to remove the vehicle from the U.S. or Canada, or to sell, lease, dispose the vehicle to anyone, without our written permission. You agree not to use the vehicle for any illegal or unauthorized purpose, including but not limited to, transporting passengers, hazardous materials, or other items, or for any other purpose that may be prohibited by law.

d. Security Interest

e. You give us a security interest in:

f. To repay the amount when we ask for it.

g. Sales, taxes, fines, or charges on the vehicle, you agree to pay the amount when we ask for it.

[illegible]

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

5. Applicable Law

contrary provisions in the contract of sale.
Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información de la ventanilla de la venta no es el formulario de la ventanilla de la venta en el contrato de venta.

unearned charges to reduce what you owe.

We may not add or alter optional equipment, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, or other contracts. If we demand that you pay all benefits under these contracts and cancel them to obtain repairs or replacement of damaged or stolen items, we will reimburse you for the loss because it is considered "damaged," "stolen," or "other." We may claim benefits under these contracts and cancel them to obtain repairs or replacement of damaged or stolen items.

[illegible]

redemption of the vehicle, you may pay to get it back (redemption) by paying all payments that are past due when you redeem, any late charges, and any expenses we incurred related to re-taking the vehicle, holding it, and preparing it for sale. After you redeem, you must make the remaining payments under this contract. Your right to redeem ends when we sell the vehicle.

d. We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you if we do so personally and the law allows it. If your vehicle has an electronic tracking device, you agree that we may use the accessories, equipment, and replacement parts still stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.

c. You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's fee and court costs as the law allows. The attorney's fee will not exceed \$100.

If you pay late, we may also take the steps described below.

a. Your amount due to pay will all come at once. If you break your promises (leave to pay), we may demand that you pay all you owe on the contract all once, subject to your right to redeem the vehicle described below. Default means:

- You do not pay any payment on time;
- You give late, incomplete, or misleading information on a credit application;
- You start a proceeding in bankruptcy or are started against you or your property;
- The amount you agreed to in this contract.

The amount you agreed to in this contract.

OTHER IMPORTANT AGREEMENTS

CERTIFICATE OF TITLE

Form 79-001-05-7-1-000

STATE OF MISSISSIPPI**ORIGINAL**

VEHICLE IDENTIFICATION NUMBER	MAKE	YEAR	MODEL	BODY	TITLE NUMBER
KMHCT4AE6CU041912	HYUN	2012	ACC	4D	F888101-01

TITLE DATE	DATE OF FIRST SALE FOR USE NEW ONLY	NO. CYL.	NEW / USED	TYPE OF VEHICLE	PASS. OR GVW
08302011	06062011	04	X	PASS	000

ODOMETER - TENTHS NOT INCLUDED

000010

ACTUAL MILEAGE

OWNER

CARTER MEI
1149 HWY 25 SOUTH
TISHOMINGO MS 38873

1ST LIENHOLDER (OR OWNER IF NO LIEN)

CAPITAL ONE AUTO FINANCE
P O BOX 255605
SACRAMENTO CA 95865

DATE:

MONTH | DAY | YEAR

06/06/2011

2ND LIENHOLDER

DATE:

MONTH | DAY | YEAR

LIEN SATISFACTION: THE UNDERSIGNED HOLDER OF ABOVE DESCRIBED LIEN(S) ON THE MOTOR VEHICLE DESCRIBED HEREON HEREBY ACKNOWLEDGES SATISFACTION THEREOF.

1ST LIEN _____ BY _____
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS _____ DAY OF _____ 20 _____

2ND LIEN _____ BY _____
(LIENHOLDER) (SIGNATURE AND TITLE)

THIS _____ DAY OF _____ 20 _____



IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS

THE 30 DAY OF AUGUST 20 11

The Mississippi State Tax Commission hereby certifies that on application duly made, the person named herein is registered by this office as the lawful owner of the vehicle described subject to the liens or security interests, as may subsequently be filed with the State Tax Commission. This certificate of title is issued pursuant to the Mississippi Motor Vehicle Title Law Section 63-21-1, Mississippi Code of 1972, and subject to the provisions thereof.

CONTROL NUMBER
18559901

STATE TAX COMMISSION

VOID IF ALTERED